Whether approved for reporting ?

For the appellant: **Mr.V.K.Verma, vice counsel for the appellant.**

For respondent: **Mr.Rajan Dewan, Addl.A.G.**

Deepak Gupta, J.

This appeal by the accused is directed against the judgment of the learned Sessions Judge, Kullu in Sessions Trial No.28 of 1998 decided on 4.10.1999 whereby the accused has been convicted of having committed an offence under Section 354 IPC and has been sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs.3000/- and in default of payment of fine to suffer further simple imprisonment for 3 months.

The prosecution case, in brief, is that complaint Kishan Singh lodged a report with the police to the effect that he is having two wives Bir Dassi and Kiran Bala. He has no children from Bir Dassi but out of his wedlock with Kiran Bala he has three children. According to him on 4.9.1997 when he reached home at

recorded under Section 154 Cr.P.C. Ext.PB recorded on 5.9.1997 the FIR Ex.PC was lodged on the same date itself. The police machinery swung into action and the small girl aged 7 years was got -examined by the doctor. The accused was arrested and got medically examined. The accused was charged with having committed offences under Sections 376 and 511 IPC. The learned trial Court held that the accused could not be convicted under Section 376 or 511 IPC since neither rape nor attempt to rape has been proved but has convicted the accused under Section 354 IPC. This judgment is under challenge in appeal.

From the medical evidence on record it is clear that no case of rape is made out against the accused. The only question is with regard to the offence under Section 354 IPC. The relevant evidence in this behalf is of the father PW-4 Kishan Singh who lodged the complaint, PW-5 Bir Dassi step mother of the

the police, which were taken in possession, vide memo Ext.PW-4/A and at that time Bir Dassi and Mani Devi were present. In cross examination he states that police Chowki is 4 to 5 k.ms. from his house. He admits that his official place of work is near the police Chowki and that the distance from Jiya to the police Chowki can be covered in about half an hour. He has denied the suggestion that he is having some dispute about the boundary of the land with the accused. A suggestion has been put to him that the accused and father of the accused were at Shimla on the date of the incident i.e. 4.9.1997. He has denied the same so far as the accused is concerned.

Bir Dassi, PW-5 states that prosecutrix is the daughter of Kiran Bala second wife of her husband. According to this witness she was going towards the fields alongwith Mani Devi PW-7 when they heard cries. When they went to the spot they saw that the accused was

station the police met them on Manikaran road. Thereafter a female police official came and took the prosecutrix for medical examination. She has denied the suggestion that there is any boundary dispute between the accused and her husband.

PW-6 is the prosecutrix. The learned trial Court after putting her a number of questions and after being satisfied that the witness understands the same has permitted her to be examined. She states that the accused gave her some gur and toffees and thereafter he took her to the field and removed her salwar and thereafter did something wrong (sharam ka kam kiya). She states that when she started crying her mother and aunt came to the spot and then accused ran away from the spot. According to her she was taken to the doctor by the police. She has denied the suggestion that she is making the statement at the instance of her parents.

police and identified the shirt Ext.P-1 and underwear Ext.P-2.

Statements of PW-8 to PW-12 are formal in nature. PW-12 is the Investigating Officer.

Mr.V.K.Verma, learned counsel for the appellant has submitted that there are various infirmities in the prosecution case and the story of the prosecution cannot be believed. According to him there is great variance with regard to the place where the report was lodged and there is no explanation as to why the FIR was not lodged on the date of the occurrence itself or immediately thereafter. He has also pointed out that there are discrepancies in the statement of the witnesses. He submits that the prosecutrix is child of such tender years that no reliance should be placed on her evidence. He further submits that no person from the village was associated with the investigation of the case and all

was recorded at Parla Bhuntar. Similarly there is conflict with regard to the place where the statement of Mani Devi was recorded. He further submits that though the underwear and shirt of the prosecutrix have been produced her salwar has not been produced and, therefore, this also casts a doubt on the prosecution case.

In support of his submissions Mr.Verma has cited a number of judgments i.e. **Lallu Manjhi and another vs. State of Jharkhand, (2003) 2 SCC 401, NTPC Ltd. vs. Surendra Prasad Jha and others, (2004)12 SCC 100, Narendra Singh and another vs. State of M.P., (2004) 10 SCC 699, Mohan Singh vs. State of Himachal Pradesh, Latest HLJ 2001 (HP) 807, Subhash Chand alias Pappi vs. State of H.P., Latest HLJ 2003 (HP) (DB) 918.**

In my view the first three judgments are not applicable to the facts of the present case. As far as

from the statements of PW-6 Bir Dassi and PW-7 Mani Devi it is clear that the accused had removed the underwear and salwar of the young 7 years old girl and was lying on top of her. He ran away on seeing these two women. As far as these facts are concerned despite cross examination the defence has failed to bring out any inconsistency in the statement of the witnesses. The facts that the accused had taken away young girl to his fields and had removed her cloths are fully proved. The behaviour of young man aged about 19 years in treating and removing the cloths of a girl aged 7 years fully amounts to outraging the modesty of a woman. He has rightly been convicted for the said offence.

Mr.Verma relying upon two judgments, one of the Apex court in **Kakoo vs. State of Himachal Pradesh, 1976 SCC (Cri) 270 and another of Rajasthan High Court in Sheoji Ram vs. State of Rajasthan, 1981 Cri.L.J. 1131,** contends that the sentence is very much high and should

In view of the above discussion, the appeal is without any merit and the same is dismissed. The appellant is directed to surrender before the trial Court on or before 15th June, 2006 for undergoing the sentence as imposed by the learned trial Court.

May 9, 2006. **(Deepak Gupta)**
PV **Judge**